

**STUDY SESSION MEETING NOTICE  
TOWN COUNCIL OF DEWEY-HUMBOLDT  
Tuesday, February 12, 2013, 2:00 P.M.**

**COUNCIL STUDY SESSION MEETING  
2735 S. HWY 69**

**COUNCIL CHAMBERS, TOWN HALL  
DEWEY-HUMBOLDT, ARIZONA**

## **AGENDA**

The issues that come before the Town Council are often challenging and potentially divisive. In order to make sure we benefit from the diverse views to be presented, the Council believes that the meeting be a safe place for people to speak. With this in mind, the Council asks that everyone refrain from clapping, heckling and any other expressions of approval or disapproval. Council may vote to go into Executive Session for legal advice regarding any matter on the open agenda pursuant to A.R.S. 38-431.03 (A) (3), which will be held immediately after the vote and will not be open to the public. Upon completion of Executive Session, the Council may resume the meeting, open to the public, to address the remaining items on the agenda. Agenda items may be taken out of order. Please turn off all cell phones. The Council meeting may be broadcast via live streaming video on the internet in both audio and visual formats. One or more members of the Council may attend either in person or by telephone, video or internet conferencing. **NOTICE TO PARENTS:** Parents and legal guardians have the right to consent before the Town of Dewey-Humboldt makes a video or voice recording of a minor child. A.R.S. § 1-602.A.9. Dewey-Humboldt Council Meetings are recorded and may be viewed on the Dewey-Humboldt website. If you permit your child to participate in the Council Meeting, a recording will be made. You may exercise your right not to consent by not permitting your child to participate or by submitting your request to the Town Clerk that your child not be recorded.

**1. Call To Order.**

**2. Roll Call.**

**2.1. Town Council.** Town Council Members Arlene Alen, David Hiles, Mark McBrady, Denise Rogers, Nancy Wright; Vice Mayor Dennis Repan; and Mayor Terry Nolan.

**3. Study Agenda.** No legal action to be taken. Town Attorney, Susan Goodwin will be in attendance.

**3.1. Discussion with Teri Drew of NACOG on Economic Development on issues and opportunities for economic development in D-H and related issues.** Discussion and possible action. [CAARF CM Wright]

**3.2. Old Black Canyon Highway issue review, update and next steps.** Pat Naville, Land Surveyor with SWI, will be in attendance.

**3.3. Discussion on advertising in the Town Newsletter. If Council wishes to allow advertising then a clear written policy needs to be implemented.** Discussion of pros/cons and related issues. [CAARF CM Wright – moved to Work Session for discussion from January 15, 2013 meeting]

**4. Comments from the Public.** The Council wishes to hear from Citizens at each meeting. Those wishing to address the Council need not request permission or give notice in advance. For the official record, individuals are asked to state their name. Public comments may appear on any video or audio record of this meeting. Please direct your comments to the Council. Individuals may address the Council on any issue within its jurisdiction. At the conclusion of Comments from the Public, Council members may respond to criticism made by those who have addressed the public body, may ask Town staff to review a matter, or may ask that a matter be put on a future agenda; however, Council members are forbidden by law from discussing or taking legal action on matters raised during the Comments from the Public unless the matters are properly noticed for discussion

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and legal action. The total time for Public Comment is **3** minutes per person. The audience is asked to please be courteous and silent while others are speaking.

**5. Adjourn.**

**For Your Information:**

Next Town Council Meeting: Tuesday, February 19, 2013, at 6:30 p.m.

Next Planning & Zoning Commission Meeting: Thursday, March 7, 2013, at 6:00 p.m.

Next Town Council Work Session: Tuesday, March 12, 2013, at 2:00 p.m.

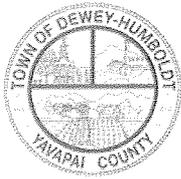
If you would like to receive Town Council agendas via email, please sign up at [AgendaList@dhaz.gov](mailto:AgendaList@dhaz.gov) and type Subscribe in the subject line, or call 928-632-7362 and speak with Judy Morgan, Town Clerk.

**Certification of Posting**

The undersigned hereby certifies that a copy of the attached notice was duly posted at the following locations: Dewey-Humboldt Town Hall, 2735 South Highway 69, Humboldt, Arizona, Chevron Station, 2735 South Highway 69, Humboldt, Arizona, Blue Ridge Market, Highway 69 and Kachina Drive, Dewey, Arizona, on the \_\_\_\_ day of \_\_\_\_\_, 2013, at \_\_\_\_ p.m. in accordance with the statement filed by the Town of Dewey-Humboldt with the Town Clerk, Town of Dewey-Humboldt.

By: \_\_\_\_\_, Town Clerk's Office.

Persons with a disability may request reasonable accommodations by contacting the Town Hall at 632-7362 at least 24 hours in advance of the meeting.



**TOWN OF DEWEY-HUMBOLDT**  
**P.O. BOX 69**  
**HUMBOLDT, AZ 86329**  
**Phone 928-632-8562 • Fax 928-632-7365**

**COUNCIL AGENDA ACTION REQUEST FORM**

**Meeting Type:**  Regular  Special  Work Session

**Meeting Date:** December 2012 or January 2013

**Date of Request:** 11/15/2012

**Type of Action:**  Routine/Consent  Regular

**Requesting:**  Action  Report Only

**Agenda Item Text (a brief description for placement on the agenda; please be exact):**  
Discussion with Teri Drew of NACOG on Economic Development on issues and  
opportunitites for economic development in D-H and related issues.

**Purpose and Background Information (Detail of requested action).** \_\_\_\_\_  
Ms. Drew is the Economic Development Director for NACOG and lives in  
Dewey-Humboldt. She has indicated she is willing to speak to the Council  
on the subject of economic development.

**Staff Recommendation(s):** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Budgeted Amount:** \_\_\_\_\_

**List All Attachments:** \_\_\_\_\_

**Type of Presentation:** \_\_\_\_\_

**Special Equipment needed:**  Laptop  Remote Microphone  
 Overhead Projector  Other: \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Note: Per Town Code §30.105(D): Any new item will be placed under "New Business" for the council to determine its disposition. It can be acted upon at that meeting, sent to staff for more work, sent to the appropriate board or commission, set for a work session or tabled for a future date, etc.**

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CURTIS, GOODWIN, SULLIVAN,  
UDALL & SCHWAB, P.L.C.

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COUNSEL - CLIENT

MEMORANDUM

TO: Mayor Terry Nolan and Members of the Dewey-Humboldt Town Council

FROM: Phyllis, L. N. Smiley, Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.,  
Town Attorneys

DATE: May 16, 2012

RE: Advertising in the Town's Newsletter

We have been asked by the Town Manager to advise you as to the legal issues that may arise if the Town of Dewey-Humboldt sells advertising to businesses to be placed in the Dewey-Humboldt Newsletter (the "Newsletter"). The Newsletter is published by the Town monthly and contains news and information about local events and activities. Currently, there are no advertisements in the Newsletter. As explained to us, the proposal is for the Town to charge a fee for the ads and there may be lower fees for businesses located in Town as opposed to those located elsewhere. There is also an alternative proposal for the Town to have a "services" section by category that lists the name, contact information and whether the business is licensed by the Town. The Newsletter would include a disclaimer stating that the Town does not endorse any of the businesses that advertise or are listed in the Newsletter. We were also asked whether the Town may limit the types of advertising that would be accepted and whether political ads could be disallowed. We have restated the issues into question and answer format for your review.

QUESTIONS AND SHORT ANSWERS:

QUESTION NO. 1: May Dewey-Humboldt sell advertising for placement in its Newsletter?

ANSWER NO. 1: Yes.

QUESTION NO. 2: May the Town place limits on the types of advertising and/or entities permitted to place advertising in its Newsletter?

ANSWER NO. 2: Yes, but a policy should be adopted that clearly sets forth what kinds of advertising will be accepted. As explained below, limiting the types of advertising accepted will prevent the Newsletter from becoming a designated public forum and instead create a limited public forum, retaining the Town's control over the content of the Newsletter.

DISCUSSION:

Question No. 1: May the Town sell advertising for placement in its Newsletter?

Yes. Many Arizona municipalities publish newsletters to keep their citizens informed of new developments in municipal government and in their cities and towns. We recommend that, prior to permitting advertising in the Newsletter, the Town should adopt a policy setting forth parameters as to what advertising will be accepted. For example, the City of Peoria permits advertising in its newsletter (the Peoria Focus), but limits the advertising to sponsors of local events. We also found several cities in other states that sell advertising for their newsletters. Attached to this memorandum are a few examples and information regarding rates and policies.

QUESTION NO. 2: May the Town place limits on the types of advertising and/or entities permitted to place advertising in its Newsletter?

Yes, but a policy should be adopted that clearly sets forth what kinds of advertising will be accepted. Adding advertisements changes the Newsletter from a non-public forum to either a limited public forum or a designated public forum pursuant to First Amendment (free speech) law, depending on whether and to what extent limits are placed on the types of advertising accepted. To further explain, we include the following discussion of the types of public fora.

The First Amendment to the United States Constitution protects free speech. The government does have some power to restrict free speech on government property. The Newsletter is a government publication and, thus, is government property. The government's authority to limit speech on government property depends upon how the property is classified. The three classifications identified by the U.S. Supreme Court are traditional public forum, designated public forum and limited public forum.<sup>1</sup>

Traditional public fora include streets, parks and sidewalks. These are "places which by long tradition or by government fiat have been devoted to assembly and debate."<sup>2</sup> Where the government intentionally opens a nontraditional public forum for public discourse, a designated public forum is created.<sup>3</sup> In traditional and designated public fora, limits on First Amendment activity are subject to strict scrutiny, meaning that to be constitutional, such limits must be content-neutral, be narrowly tailored to serve a significant government interest and leave open ample alternative channels for communication of information.<sup>4</sup> In other words, the same rules apply to designated public fora as traditional public fora.

<sup>1</sup> See *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44-46 (1983).

<sup>2</sup> *Id.* at 44

<sup>3</sup> See *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 677 (1998).

<sup>4</sup> See *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

Public property that is not a public forum by either tradition or designation is a non-public forum.<sup>5</sup> Essentially all public property, other than streets, sidewalks and parks, are non-public fora. A city may restrict or prohibit speech that is not compatible with the city's purposes in non-public fora. It may select the speakers and subject areas.<sup>6</sup> Restrictions on speech in nonpublic fora must only be reasonable and "not an effort to suppress expression merely because public officials oppose the speaker's view."<sup>7</sup>

Presently the Newsletter is a non-public forum. Its purpose is to inform the Town residents of matters related to Town government and the services provided by the Town. All of the information in the Newsletter is provided by the Town, its Staff and local government officials. The Town is in total control of the content of the Newsletter. If the Town opens the Newsletter for advertising, it will create a limited public forum.

The U.S. Supreme Court has used the term "limited public forum" to describe "a type of nonpublic forum that the government intentionally has opened to certain groups or to certain topics."<sup>8</sup> Where a subject matter is categorically excluded from the forum, there is no impermissible viewpoint discrimination, regardless of the speaker's stand on the topic.<sup>9</sup> The courts "look to whether the exclusion of certain expressive conduct is properly designed to limit the speech activity occurring in the forum to that which is compatible with the forum's purpose."<sup>10</sup> As an example, the City of Peoria created a limited public forum by permitting advertising in the Peoria Focus but limiting advertisers to vendors and providers of local events and activities. The purpose of the Peoria Focus is to disseminate information to residents, not to be a location for public comment and discourse. Limiting advertising to City events and sponsors of those events furthers the purpose of the publication.

In order to maintain the status of a newsletter as a nonpublic or limited public forum, it is essential for the municipality to adopt and enforce a policy limiting advertising in the publication. "What matters is what the government actually does – specifically, whether it consistently enforces the restrictions on use of the forum that it adopted. . . . Thus, consistency in application is the hallmark of any policy designed to preserve the non-public status of a forum."<sup>11</sup> If it decides to permit advertising in the Newsletter, we recommend that the Town Council adopt and adhere to a clear policy as to the types of advertising that will be accepted.

<sup>5</sup> *Perry* at 46.

<sup>6</sup> *See DiLoreto v. Downey Unified School Dist.*, 196 F.3d 958, 967 (9th Cir.1999).

<sup>7</sup> *United States v. Kokinda*, 497 U.S. 720, 730 (1990).

<sup>8</sup> *DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958, 965 (9<sup>th</sup> Cir. 1999)(holding the school district did not violate the First Amendment rights of an advertiser who wanted to post a paid advertisement containing the Ten Commandments on the high school baseball field fence, where the school district in the past had only permitted business advertisements and had rejected certain advertising such as for alcohol and abortion clinics; the school district created a limited public forum closed to certain subjects, including religion).

<sup>9</sup> *See id.* at 969.

<sup>10</sup> *United Food & Commercial Workers Union, Local 1099 v. Southeast Ohio Regional Transit Authority*, 163 F.3d 341, 352 (6<sup>th</sup> Cir. 1998).

<sup>11</sup> *Hopper v. City of Pasco*, 241 F.3d 1067, 1075-1077 (9<sup>th</sup> Cir. 2001).

If there are limits on the content of the advertising permitted, similar types of speech must be permitted. In an Arizona case, a school district sold hallway tiles with inscribed messages to raise funds.<sup>12</sup> The Paradise Valley School District reserved "the right to make minor modifications" to messages requested by parents. The District had no written policy concerning permissible messages, but allowed inscriptions conveying "ideas or expression" and "memorial statements, statements of personal belief, expressions of patriotism, recitations of poetry and even what appear to be business advertisements."<sup>13</sup> It also allowed "messages of love, praise, encouragement, and recognition of students."<sup>14</sup> The District rejected the plaintiffs' messages, "God Bless Haley, We Love You Mom and Dad" and "God Bless Quinn, We Love You Mom and Dad."<sup>15</sup> The reason for exclusion was the use of the word "God," a religious reference, and the District's concern to maintain the separation of church and state.<sup>16</sup> The Court ruled that "a policy broadly excluding religion as a category of speech is not viewpoint neutral if the policy permits the presentation of other views dealing with the same subject but excludes those presenting the issue from a religious standpoint."<sup>17</sup> Applying this legal principle, the Court found that the District had violated the plaintiffs' free speech rights under the First Amendment.<sup>18</sup>

## CONCLUSION

Dewey-Humboldt may permit advertising in its Newsletter but should exercise caution to avoid turning the Newsletter into a designated public forum. We recommend that before accepting any advertising, the Town Council consider the following general rules and guidelines:

1. To ensure uniform and fair treatment of all persons, the policies should be in writing and explain permissible types of advertising and types of advertising that are not permitted. If advertising will be accepted only from businesses located within the Town limits that should be stated in the policy.
2. The Town may prohibit offensive, controversial and/or inappropriate advertising in the Newsletter. In doing so, the written policy should be as clearly written and as specific as possible in order to avoid being too vague.

<sup>12</sup> See *Seidman v. Paradise Valley Unified School Dist.*, 327 F.Supp. 2d 1098 (D. Ariz. 2004).

<sup>13</sup> *Id.* at 1110.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1102.

<sup>16</sup> *See id.*

<sup>17</sup> *Id.* at 1109.

<sup>18</sup> See *Seidman v. Paradise Valley Unified School District*, 327 F. Supp. 2d 1098 (D. Ariz. 2004). Messages approved by the district included: Bless Our School; Honor and Respect All; In Memory of Abby Meyer; Knowledge is Power Breanna & JJ; No Question is Wrong; Many Promises to Keep Jean-March Puch 2002; Miles to Go Before I Sleep R Frost JM Punch; Keven Murphey Live Free. Other messages included: Horses R Family, Children are Gifts, Life Free, We Bless America, United We Stand, Peace on Earth, Let Freedom Ring, Southwest Otolaryngology. Other messages included: Alyssa Torpey 2002 Reach for the Stars; Fly Like An Eagle Ben Ruh 2002; Kacey Milligan Was Here; We Love You Alyssa & Jonathan, and many more.

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3. The Town is required to receive adequate consideration (compensation) for the placement of advertisement in its Newsletter in order to avoid violating the Gift Clause of the Arizona Constitution.

4. The Town should make sure that the public does not perceive the Town as endorsing or warranting the products or services of the companies who place advertisements. Disclaimer language should be used in every Newsletter.

5. The Town should consider preparation of a brief contract for advertising, specifying each party's responsibilities. This can be as simple as language on the application for the advertisement stating that the Town will publish the advertisement for one or several editions of the Newsletter. It would set forth the amount of compensation, as well as the time period, the size of the ads, etc.

Please let us know if you have any questions or require further assistance.

PLNS/km

cc: Ms. Yvonne Kimball, Town Manager  
File No. 1908-1